REMARKS

Reconsideration of the above-identified application in view of the amendment above and the remarks below is respectfully requested.

Claim 81 has been canceled in this paper. Claims 70, 75 and 77 have been amended in this paper. No new claims have been added in this paper. Therefore, claims 70-80 and 82-83 are pending and are under active consideration.

Claims 70-76 and 81-83 stand rejected under 35 U.S.C. 103(a) "as being unpatentable over Mello et al (see Fig. 1) in view of Williams et al (see col. 1, lines 52-64 and col. 4, lines 1-9; 12, 14 and 42 in Fig. 1)."

> Mello et al (Fig. 1) discloses the basic claimed method of forming a laminate structure by providing a first web (28) composed of a plurality of elements (trays 30), the web being made by continuous molding and being of a rigid plastic material (see claim 1 in the reference), providing a second web (34) composed of a plurality of elements (lids or covers 36) that are alignable with the first elements, the second web being made by a continuous molding and also being a rigid material (see claim 1) and passing the first and second web through a platen sealing and chilling station (20). Note that the primary reference also teaches the instant aspect of having the respective elements of each web formed in an orthogonal matrix, with multiple elements arrayed across the width of each web - see Fig. 5. Essentially, the primary reference fails to teach that the webs are passed through a lamination nip to fixedly join the first and second elements to form the laminate structure. Williams et al discloses a method of forming packages across the width of webs which are laminated together in a roller nip (see 12, 14 and 42 in Fig. 1). The secondary reference also teaches the equivalence of roller nips and opposed platens to perform the lamination-see column 4, lines 1-9. It would have been obvious to one of ordinary skill in the art to modify the method of the primary reference by using a roller nip in lieu of a platen since such are known equivalents in the art as taught by Williams et al. It is submitted that continuous molding through a rotary extruder would have been an obvious expedient over thermoforming a web as disclosed in the primary reference. The first

> web of Mello et al is taught as being a rigid plastic while the second web is disclosed as being a metallized foil. Typically, such foils are made of plastic. However, it certainly would have been obvious to have provided a rigid plastic for both webs, dependent on the exact material desired for the container. The first and second elements of the webs of Mello et al are trough shaped as set forth in instant claim 83. The exact fitting of these elements - ie, press-fitting at the nip--would have been an obvious feature dependent on the exact shape desired for the container.

Insofar as the subject rejection relates to claim 81, the rejection is moot in view of Applicants' cancellation of claim 81 in this paper. Insofar as the subject rejection relates to claims 70-76 and 82-83, Applicants respectfully traverse the subject rejection. Claim 70, from which claims 71-74, 76 and 82-83 depend, has been amended herein to include the limitations of canceled claim 81. As such, claim 70 now recites "[a] method of forming a laminate structure, said method comprising the steps of:

(a) providing a first web, said first web comprising a plurality of first elements, wherein said first elements of said first web are made of a rigid plastic;

(b) providing a second web, said second web comprising a plurality of second elements, said second elements being alignable with said plurality of first elements, wherein said second elements of said second web are made of a rigid plastic;

(c) passing said first web and said second web through a lamination nip to fixedly join said first elements and second elements, whereby a laminate structure is formed."

Claim 70 is not rendered obvious over Mello et al. in view of Williams et al. for at least the reason that Mello et al. and Williams et al., whether taken individually or in combination, do not teach or suggest a method of forming a laminate structure that comprises, amongst other things, providing a first web and a second web, the first web comprising a plurality of first elements made

of a **rigid plastic**, the second web comprising a plurality of second elements made of a **rigid plastic,** and passing the first and second webs **through a lamination nip** to fixedly join the first and second elements.

Mello et al. relates to a vacuum seal station for use in a vacuum packaging machine for packaging meat products. The Patent Office appears to concede that Mello et al. fails to teach making the second elements out of a rigid plastic and also appears to concede that Mello et al. fails to teach using a lamination nip to fixedly join the first and second elements. With respect to the issue of making the second elements out of a rigid plastic, the Patent Office argues that "it certainly would have been obvious to have provided a rigid plastic for both webs, dependent on the exact material desired for the container." Applicants respectfully submit that the Patent Office's line of reasoning merely begs the question and is tantamount to stating that "it would have been obvious to use a rigid plastic if one wished to use a rigid plastic." The Patent Office bears the burden of proving why a person of ordinary skill in the art would have been motivated to modify Mello et al. by making both the first and second elements out of a rigid plastic. The mere fact that it could have been done if one wished to it does not meet the Patent Office's burden.

With respect to the Patent Office's apparent argument that, based on Williams et al., lamination nips and platens are always interchangeable, Applicants respectfully submit that the Patent Office has extended the teachings of Williams et al. far beyond that which would have been reasonable to a person of ordinary skill in the art at the time of the invention. In contrast to Mello et al., which is directed at a rigid packaging system for meat products, Williams et al. is directed at **flexible** packaging used to contain a **non-solid material**. The mere fact that Williams et al. may discuss the possibility of using opposed platens, instead of a lamination nip, to join together **flexible**

webs of material to contain non-solid material does not mean that a person of ordinary skill in the art would have been motivated to use a lamination nip to join the particular types of **rigid** elements that are disclosed in Mello et al.

Claim 75 is patentable over Mello et al. and Williams et al. for at least the same reasons discussed above in connection with claim 70.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claims 77-80 stand rejected under 35 U.S.C. 103(a) "as being unpatentable over Mello et al (see Fig. 1) in view of Williams et al (see col. 1, lines 52-64 and col. 4, lines 1-9; 12, 14 and 42 in Fig. 1) and Anderson, III et al." In support of the rejection, the Patent Office states the following:

> Mello et al and Williams et al are applied for reasons of record as set forth in paragraph 1, supra, with Anderson, III et al being applied for reasons of record as set forth in paragraph 2 of the last office action. It is submitted that Mello et al and Williams et al disclose methods of forming containers and that these methods would have been readily adapted to house an EAS marker as generally taught in Anderson, III et al.

Applicants respectfully traverse the subject rejection. Claims 78-80 depend from claim 77, which has been rewritten in independent form and amended to recite that the first and second elements are made of a rigid plastic. Therefore, claim 77 is patentable over Mello et al. and Williams et al. for at least the reasons given above. Anderson III et al. fails to cure all of the deficiencies of Mello et al. and Williams et al. with respect to claim 77. Moreover, to the extent that the Patent Office is arguing that "Williams et al disclose[s] methods of forming containers and that these methods would have been readily adapted to house an EAS marker," Applicants note that Williams et al. relates to flexible packaging for containing a non-solid material; consequently,

Applicants respectfully submit that one of ordinary skill in the art would not have been motivated to adapt the teachings of Williams et al. to house an EAS marker.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

In conclusion, it is respectfully submitted that the present application is now in condition for allowance. Prompt and favorable action is earnestly solicited.

If there are any fees due in connection with the filing of this paper that are not accounted for, the Examiner is authorized to charge the fees to our Deposit Account No. 11-1755. If a fee is required for an extension of time under 37 C.F.R. 1.136 that is not accounted for already, such an extension of time is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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By: _____

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 16, 2009.

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